NCAT Tribunal and what it can do for you in strata?

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We often hear about “NCAT” and “Tribunal” proceedings in the land of strata. Ever wondered what it can do for you? It sounds difficult. But it should not be, really! We know many pretend to be Supreme Court judges in NCAT matters but that is not entirely correct. It can get complicated especially with building, construction and defect disputes etc, but not the everyday nuisances and issues!

In fact, the NCAT application fee for many common strata and community scheme issues is just $107 and lawyers aren’t really meant to be involved in the first place (And here at Matthews Folbigg, we can even draft the points and bundle for you to submit and argue for those simpler issues – being one of our practical options available).

Below is a broad overview of what NCAT can do for you (and what it can’t):

1. Noise transmission – We have various practical packages to deal with this, before or at the NCAT level. Like anything else, you will need evidence. We will guide you as to what is needed. We recognise the parties are often neighbours. So, we always strive to settle the matter amicably using our specialist negotiation skills without resorting to the Tribunal.
2. Smoke drift – Whilst unit owners and occupiers are, broadly speaking, free to do what they want within their own unit as long as it does not interfere other people or property, second-hand smoke should <u>not</u> drift from one unit into another other. At the same time, smokers that are doing the right thing should <u>not</u> be subject to fictitious or vexatious claims. We have fair and practical solution packages for both sides in the negotiation and dealing of Tribunal matters. We are also currently lobbying the NSW Government to provide assistance in the matter. One of the solutions that we are advocating is the need for an on-demand investigative service using smoke monitors and video evidence (which should further simplify the dispute process).
3. Common property and access to lot – Water penetration from upstairs, or having an issue with past works, common property and/or its use? Come speak to us, whether you are a lot owner, occupier, strata manager or otherwise. These matters can constitute an actionable nuisance, hazard or interference against a lot. So, it needs to be properly managed as NCAT can make rectification and compensation orders.
4. Renovation and development works/plans – Lot owners/occupiers, please stop making unauthorised changes to your lot and/or common property! We know it can be very tempting to put up a partition wall (who will know, right?). But if there is a problem (say, fire or other building issue), it may well void your insurances and you may be exposed to a string of law suits. If the proposed work is relatively significant, we take a no non-sense approach to get it approved within the scheme and via NCAT if need be.
5. Animals/Pets – We are aware of the recent Cooper case in the NSW Court of Appeal which in essence is against a blanket animal/pet ban. So, you can’t ban them just for the sake of banning them for no good or apparent reason. It is not a blank cheque for

101 Dalmatians to start roaming free everywhere! We have an improved animal by-law including a “common sense” application form and a set of reasonable conditions. If need be, we can even assist you in a GoFundMe campaign to take it up all the way back to the Court of Appeal again.

6. By-law disputes – Frankly, we see a lot of poorly drafted by-laws. Or if they are drafted, they are either way too long/complex or way too short. Just because there is a by-law in place does not mean it is valid or enforceable. That’s why NCAT routinely hears applications about the revocation, change or invalidation of by-laws. Yes, we know strata law can be highly technical. But our drafts and approach are just simpler and better.
7. Strata / community scheme’s management problems – We come across a lot of these. Some are real and have merit but some are just not. NCAT can make a determination regarding:
    - meetings and decisions of the owners corporation (including approvals or refusals), the strata committee (including individual members) and also the strata or building managers;
    - financial management (or mismanagement) of the owners corporation’s funds;
    - (alleged) rogue owners, occupiers and strata managers and other parties;
    - people that have no regard to others, blatantly breaching the by-laws or other laws etc.

    We have strong experience in this area of dispute resolution and have various packages to support the quick identification and resolution of problems. Sometimes, an email or phone call from us would just resolve these. NCAT has wide ranging powers in the above matters, including invalidation of resolutions, requiring further meeting/s, alteration of contributions, removing a person from office (including a strata or building manager) etc. We streamline our dispute resolution process as we always have NCAT proceedings in mind (so, the work would not get doubled up).
8. Building and construction / defect issues – Now these are the most complex type and they often get appealed to the Supreme Court or the Court of Appeal. So, if you have an issue in this area, it is best to seek legal advice as soon as possible. NCAT routinely hears these matters including statutory warranties under the Home Building Act. They have a jurisdictional claim limit of $500,000. If the claim amount is more, it will go to District or the Supreme Court. We have a huge litigation team here for these and other non NCAT matters.

So, come and speak to us if you have any strata issues. You may well be surprised at how fast, structured and effective our resolutions are!

More Information

Please contact our Property/Strata law team at Matthews Folbigg Lawyers on 9635 7966 if you would like advice or assistance.

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